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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,274	02/05/2001	Jean Paul Marcade	ENDOV-54735	3685

24201 7590 05/25/2006

FULWIDER PATTON
6060 CENTER DRIVE
10TH FLOOR
LOS ANGELES, CA 90045

EXAMINER

WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/777,274
Filing Date: February 05, 2001
Appellant(s): MARCADE ET AL.

MAILED
MAY 25 2006
Group 3700

John V. Hanley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 16, 2006, appealing from the Office action mailed August 23, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

As noted by the Appellant, an appeal has been filed in co-pending U.S. application serial no. 09/637,505, which belongs to the same family of applications as the present application.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5653743	MARTIN	8-1997
5800508	GOICOECHEA et al.	9-1998

(9) Grounds of Rejection

The following ground of rejection is applicable to the appealed claims:

Claims 67-72 and 74-82 are rejected under 35 U.S.C. 102(e) as being anticipated by Martin, US 5,653,743, which discloses a body **1** having a superior end portion and a bifurcated inferior end portion defining a first leg **6** and a second leg **8** (Figure 1) and discloses an extender **18** in the form of a graft (column 4, lines 15-18). The length of the leg **6** as measured from the center of the opening **7** to the bottom end **6** is greater than the length of the leg **8**, as seen from the dimensions set forth at column 2, line 65, through column 3, line 3, and as shown in Figures 4 and 5, which further illustrate that the body **1** is configured so that the first leg **6** is capable of extending into a bifurcating section of vasculature and the second leg **8** is capable of terminating in an upstream section of vasculature. Because of the similar diameters of the bottom end **6** (column 2, line 63) and the opening **7** and short tube graft **8** (column 2, lines 65-67) and because of the compressible, self-expanding mesh supports (column 2, lines 53-54; column 3, lines 3-5; column 4, lines 15-18; etc.), the extender **18** is sized such that it is certainly *capable* of mating with the longer leg **6**, even though such was not the intent. And the mating can occur after the body **1** is placed in vasculature of a cadaver (e.g., for demonstration or instructional purposes), of an animal (e.g., for analyzing the physiological response to a vascular obstruction), or of a human patient (e.g., by extending the longer leg **6** further into the external iliac artery rather than into the hypogastric or internal iliac artery and attaching the extender **18** to the leg **6**, or by extending the leg **6** into the hypogastric artery and using bypass surgery to circumvent any obstruction created by the extender **18** engaging the leg **6**, as evidenced by Goicoechea et al., US 5,800,508, and explained in the final Office action of August 23, 2005, at page 2, lines 17-24).

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Regarding claims 70 and 82, in view of the diameter range specified at column 2, lines 61-62, and because of the aforementioned self-expanding mesh supports, the superior end **5** is *capable* of being placed within an abdominal aorta of a small mammal, with the first leg **6** being placed in an iliac artery, even though such was not the intent.

(10) Response to Argument

While Martin does not teach or suggest mating or engaging the extender **18** to the longer leg **6**, the current claims are not directed to a surgical procedure or process but instead are drawn to a device in which the actual mating of the longer leg to the extender is *not* positively recited. Features of an apparatus may be recited functionally (e.g., the extender being “configured to mate with the first leg after the body is placed in vasculature”: claim 67, line 7-8), but the apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP § 2114). The scope of the underlying structure associated with such functional language does not distinguish over Martin, as seen from the aforementioned implant configurations achievable with the Martin structure. Regarding claim 81, the leg **6** diameter increases towards the *superior* end portion (Figure 1; column 2, lines 61-63).

(11) Related Proceeding(s) Appendix


No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer. The Appellant has failed to include an evidence appendix and a related proceedings appendix with the indication “none” for each (MPEP § 1205.02).

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Conferees:




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Corrine McDermott

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